

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDWIN DAVID CORBETT,

Petitioner,

v.

MARGARET GILBERT,

Respondent.

CASE NO. 16-5817-RJB JRC

ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING
PETITION FOR WRIT OF HABEAS
CORPUS AND CERTIFICATE OF
APPEALABILITY

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 12. The Court has reviewed the Report and Recommendation, objections, and the remaining file.

Petitioner filed a Petition for a Writ of *Habeas Corpus* pursuant to 28 U.S.C. § 2254 on September 23, 2016, challenging his 2007 conviction for rape of a child in the first degree. Dkt. 1. The Report and Recommendation recommends a denial of his petition as it is untimely and a finding that there are no extraordinary circumstances that require equitable tolling. Dkt. 12. It

1 further recommends that a Certificate of Appealability be denied. *Id.* Petitioner filed objections
2 to the Report and Recommendation. Dkts. 13 and 14.

3 The facts and procedural history are in the Report and Recommendation (Dkt. 12, at 1-2)
4 and are adopted here.

5 The Report and Recommendation (Dkt. 12) should be adopted and the petition denied as
6 untimely. Petitioner's objections regarding the timeliness of his petition fail to provide any basis
7 to reject the Report and Recommendation. These objections are a repetition of his prior
8 arguments and are addressed in the Report and Recommendation.

9 Petitioner also objects to the recommendation that a Certificate of Appealability be
10 denied. Dkts. 13 and 14.

11 The district court should grant an application for a Certificate of Appealability only if the
12 petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C.
13 § 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a *habeas*
14 petitioner must make a showing that reasonable jurists could disagree with the district court's
15 resolution of his or her constitutional claims or that jurists could agree the issues presented were
16 adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 483–
17 485 (2000) (*quoting Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

18 A Certificate of Appealability should not issue here. In this case, Petitioner has not made
19 a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). He has
20 not made a showing that reasonable jurists could disagree with this court's resolution of his
21 constitutional claims or that jurists could agree the issues presented were adequate to deserve
22 encouragement to proceed further. *Slack*, at 483-485. The Report and Recommendation's
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1 recommendation that a Certificate of Appealability should not issue here (Dkt. 12) should be
2 adopted.

3 Accordingly:

- 4 • The Court **ADOPTS** the Report and Recommendation (Dkt. 12);
- 5 • The Petition for Writ of *Habeas Corpus* (Dkt. 1) is **DENIED**;
- 6 • The issuance of a Certificate of Appealability is **DENIED**; and
- 7 • This case is **DISMISSED WITH PREJUDICE**.

8 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
9 to any party appearing *pro se* at said party's last known address.

10 Dated this 24th day of January, 2017.

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13 ROBERT J. BRYAN
14 United States District Judge
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